

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSEPH SIMMONS,

Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,

Defendants.

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**Civil Action
No. 22-1644**

ORDER

AND NOW, this _____ day of _____, 2023, upon consideration of the Motion for Leave to File a Reply Brief filed by Plaintiff, and any response thereto, it is hereby ORDERED that the motion is GRANTED. The Clerk of Court is directed to file the Reply Brief attached to that Motion as Exhibit A as of the date of the Motion.

BY THE COURT:

John M. Gallagher, J.

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MOTION FOR LEAVE TO FILE A REPLY BRIEF

Plaintiff Joseph Simmons, by and through undersigned counsel and in conformance with this Court's Policies and Procedures, hereby moves for leave to file the attached reply brief in support of his motion for leave to amend. In support of this motion, it is averred:

1. Plaintiff Joseph Simmons sought leave to amend his complaint on May 22, 2023. Docket No. 49.
2. In seeking leave to amend, Plaintiff submits that the new amendment provides factual allegations drawn from material recently made available, furthers the analysis of certain claims in the complaint, and addresses developing case law in the District Court for the Eastern District of Pennsylvania. *Id.*
3. Plaintiff argues that the amendment is not unjust, in that it has not caused undue delay, bad faith, and/or is not futile and therefore meets the standard for leave to amend. *Id.*
4. Defendants respond that amendment is unjust because it demonstrates undue delay, because amendment is futile, and because amendment is prejudicial. Docket No. 50.
5. Plaintiff seeks leave to file a response to Defendant's arguments against Plaintiff's amendment.

6. Defendants' futility argument is meritless, Plaintiff's amended complaint states causes of action against all defendants.
7. In the time since parties' last met and conferred on Defendants' perceived pleading deficiencies a Eastern District Court published a case speaking to the legal issues at bar. *Diaz v. City of Phila*, No. 22-cv-3286, --- F. Supp. 3d ---, 2023 WL 3011340, at *3–8 (E.D. Pa. Apr. 20, 2023).
8. As to undue delay, Plaintiff adds information from recently docketed and verified filings in two matters other cases in the Eastern District to support its existing claims; but does not do so in a fashion designed to delay the proceedings of the case, as for instance two days prior to the filing deadline for Defendants' summary judgement filing. *Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107 116 (3d Cir. 2003) (Finding undue delay when a party sought leave to amend days prior to defendant's deadline for filing a motion for summary judgment).
9. As to the prejudicial impact of the proposed amendment, Defendants' argument is without legal support, overlooks the nature of Plaintiff's prior amendments and does not consider the timing of the Diaz decision.
10. Plaintiff seeks leave to file a brief reply in order to address Defendants' arguments.

WHEREFORE, Plaintiff respectfully requests that the Court GRANT its motion and direct that the Reply Brief, attached hereto as Exhibit A, be deemed filed.

Respectfully submitted,

MCELDREW PURTELL

/S/ Colin S. Haviland
Colin S. Haviland, Esq.
John J. Coyle, Esq.
123 South Broad Street
Suite 2250
Philadelphia, PA 19109
t: (215) 545-8800
chaviland@mceldrewpurtell.com
jcoyle@mceldrewpurtell.com

ABOLITIONIST LAW CENTER

/S/ Nia O. Holston
Nia O. Holston, Esq.
Bret D. Grote, Esq.
PO Box 8654
Pittsburgh, PA 15221
t: (267) 357-0948
nia@alcenter.org
bretgrote@abolitionistlawcenter.org

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CERTIFICATE OF SERVICE

I hereby certify that on the date below Defendants' Motion for Leave, attached exhibit, and this Certificate of Service were filed via the Court's electronic filing system and are available for downloading.

Date: June 1, 2023

McEldrew Purtell

/s/ Colin S. Haviland

Colin S. Haviland, Esq.

John J. Coyle, Esq.

123 S. Broad Street

Suite 2250

Phila, PA 19109

T: 215-545-8800

chaviland@mceldrewpurtell.com

jcoyle@mceldrewpurtell.com